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TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

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Proposed Rule  
LSA Document #06-602

## DIGEST

Amends [405 IAC 5-13-1](#) to add new definitions specific to the rule. Amends [405 IAC 5-13-7](#) to revise requirements for admission, transfers, and reevaluation for continued placement to large private and small ICFs/MR. Adds [405 IAC 5-13-7.1](#) and [405 IAC 5-13-7.2](#) to add and define a new category of community residential facilities for persons with developmental disabilities that will serve adults who need extensive behavioral supports. Repeals [405 IAC 5-13-10](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[405 IAC 5-13-1](#); [405 IAC 5-13-7](#); [405 IAC 5-13-7.1](#); [405 IAC 5-13-7.2](#); [405 IAC 5-13-10](#)

SECTION 1. [405 IAC 5-13-1](#) IS AMENDED TO READ AS FOLLOWS:

**[405 IAC 5-13-1](#) Policy; definitions**

**Authority:** [IC 12-8-6-5](#); [IC 12-15-1-10](#); [IC 12-15-1-15](#); [IC 12-15-21-2](#); [IC 12-15-21-3](#)

**Affected:** [IC 12-13-7-3](#); [IC 12-15-32](#)

Sec. 1. (a) Medicaid reimbursement is available for services provided by a certified intermediate care facility for the mentally retarded (ICF/MR) when ~~such~~ **the** services have been rendered to a Medicaid recipient whose reimbursement has been approved by the office. ~~Such~~ **The** services must be provided in accordance with:

- (1) [IC 12-15-32](#);
- (2) 42 CFR 483.400-480; and
- (3) this rule.

(b) As used in **The following definitions apply throughout** this rule: "small ICF/MR" means a certified intermediate care facility for the mentally retarded (also known as "CRF/DD", which means a certified community residential facility for the developmentally disabled) that:

- (1) provides ICF/MR services for not less than four (4) and not more than eight (8) developmentally disabled persons in a residential setting; and
- (2) meets the federal requirements for an ICF/MR group home.

(1) **"Assistance" means receiving aid from another person in the form of:**

- (A) physical guidance; or
- (B) verbal, visual, gestured, or physical prompts.

(2) **"Dependent" means relying on another person to physically perform tasks.**

~~(c) As used in this section,~~ (3) "Large private ICF/MR" means an institution certified as an intermediate care facility for the mentally retarded that:

- (4) (A) is not owned ~~and/or~~ **or** operated, **or both**, by an agency of federal, state, or local government; and
- (2) (B) serves more than eight (8) developmentally disabled persons.

~~(d) As used in this rule,~~ (4) "Large state ICF/MR" means a state owned or **state** operated facility that provides ICF/MR services for more than eight (8) developmentally disabled persons in an institutional setting.

(5) **"Small ICF/MR" means a certified intermediate care facility for the mentally retarded (also known as "CRF/DD", which means a certified community residential facility for the developmentally disabled) that:**

- (1) provides ICF/MR services for not fewer than four (4) and not more than eight (8) developmentally disabled persons in a residential setting; and
- (2) meets the federal requirements for an ICF/MR group home.

(Office of the Secretary of Family and Social Services; [405 IAC 5-13-1](#); filed Jul 25, 1997, 4:00 p.m.: 20 IR 3315; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: [20071010-IR-405070311RFA](#))

SECTION 2. [405 IAC 5-13-7](#) IS AMENDED TO READ AS FOLLOWS:

**405 IAC 5-13-7 Approval for admission, transfers, and reevaluation for continued placement to large private and small ICFs/MR**

**Authority:** [IC 12-8-6-5](#); [IC 12-15-1-10](#); [IC 12-15-1-15](#); [IC 12-15-21-2](#); [IC 12-15-21-3](#)

**Affected:** [IC 12-13-7-3](#); [IC 12-15](#)

Sec. 7. (a) Admissions to large private and small ICFs/MR shall be based upon a determination of the need for such the care by the ~~division of disability, aging, and rehabilitative services/bureau~~ **bureau** of developmental disabilities services (**BDDS**). The interdisciplinary professional team from the proposed placement facility shall review a comprehensive evaluation covering:

- (1) physical;
- (2) emotional;
- (3) social; and
- (4) cognitive;

factors, as required by federal law, to ensure the facility can meet the needs of the recipient.

(b) The interdisciplinary professional team includes a physician **and** a certified social worker. ~~and other professionals, one (1) of whom is a qualified mental retardation professional.~~

~~(c) A qualified mental retardation professional is a person as defined in 42 CFR 483.430.~~

~~(d)~~ **(c)** The following guidelines are applicable for admission and readmission of a recipient **approval, reevaluation, and payment** to a large private or small ICF/MR:

~~(1) The office must authorize Medicaid payment for each Medicaid recipient in the large private and small ICF/MR. This process must be completed prior to the first Medicaid payment. Determination of appropriate reimbursement is based on the documentation required by this subsection.~~

~~(2)~~ **(1) Approval for admission** to all large private and small ICF/MR facilities requires **the following:**

**(A)** Diagnostic evaluation, including social and psychological components.

**(B) Satisfaction of minimum requirements for eligibility as stated in sections 7.1 and 7.2 of this rule.**

~~(3) BDDS or its designee must submit Form 450B, completed by the physician, for each Medicaid applicant or recipient for whom services are required. The need for care and placement during any payment period must be included in the medical evaluation. The payment period will not be approved for any period of time that precedes the date the physician signs the Form 450B certifying~~ **(2) At the time each resident is admitted, the facility must have physician orders for the resident's immediate care and the need for ICF/MR services.**

~~(4) Both recipient and provider must have been eligible during any period for which Medicaid reimbursement is requested.~~

~~(5) A physician must certify the patient's need for ICF/MR care at the time of admission. The first recertification must take place within twelve (12) months from the date of admission certification. Subsequent recertifications must occur annually thereafter, or more often, as determined by the interdisciplinary team.~~

~~(6) The certification must specify the level of care required by the recipient, and the recertification must clearly indicate the need for care to continue at this level. The certification must be signed by the physician and dated at the time of signature. Subsequent recertifications must be signed by a physician, a physician assistant, or a nurse practitioner and dated at the time of signature. (A STAMPED SIGNATURE WILL NOT BE ACCEPTED.)~~

**(3) The office or its designee will grant Medicaid payment for each approved Medicaid recipient placed in a large private or small ICF/MR. Determination of appropriate reimbursement is based on the documentation required by this subsection.**

**(4) Payment is for approved providers and the occupant that has met level of care criteria.**

~~(7)~~ **(5)** The admission certification and the three (3) latest recertifications must be kept in the recipient's active medical record. All other recertification **current physician attestation and other supporting documentation** must be kept on file in the facility and be available for review purposes.

~~(8) Pursuant to (6)~~ **(6)** Under 42 CFR 483.440(c)(3), the interdisciplinary professional team must, within thirty (30) days after admission, review and update the preadmission evaluation.

~~(9)~~ **(7)** The individual program plan must be:

**(A)** reviewed at least by the qualified mental retardation professional; and

**(B)** revised as necessary as required by 42 CFR 483.440(f).

~~(10)~~ **(8)** At least annually, the comprehensive functional assessment of each individual must be:

**(A)** reviewed by the interdisciplinary team for relevancy; and

(B) updated as needed in accordance with 42 CFR 483.440(f)(2).

**(9) Transfer between facilities:**

(A) with the same licensure categories; and

(B) requiring no changes in the intensity of services for the member;

will only require completion of the division of disability and rehabilitative services designated form.

(10) All other transfers will require level of care redetermination.

(11) For large state ICFs/MR, if the recipient is transferred to a noncertified unit, the admission procedure as described in section 8 of this rule must be followed for any readmission to the large state ICF/MR in order to determine reimbursement.

*(Office of the Secretary of Family and Social Services; [405 IAC 5-13-7](#); filed Jul 25, 1997, 4:00 p.m.: 20 IR 3318; filed Sep 27, 1999, 8:55 a.m.: 23 IR 312; readopted filed Jun 27, 2001, 9:40 a.m.: 24 IR 3822; readopted filed Sep 19, 2007, 12:16 p.m.: [20071010-IR-405070311RFA](#))*

SECTION 3. [405 IAC 5-13-7.1](#) IS ADDED TO READ AS FOLLOWS:

**[405 IAC 5-13-7.1](#) Eligibility criteria for ICF/MR level of care for persons with developmental disabilities**

Authority: [IC 12-8-6-5](#); [IC 12-15-1-10](#); [IC 12-15-1-15](#); [IC 12-15-21-2](#); [IC 12-15-21-3](#)

Affected: [IC 12-13-7-3](#); [IC 12-15](#)

**Sec. 7.1.** At the time of an initial evaluation or assessment, in order for an individual to meet the criteria for developmental disabilities eligibility and level of care, the individual must provide the following:

(1) Documented evidence of the presence of a mental impairment or physical impairment (other than a sole diagnosis of mental illness) as diagnosed by a physician and described as follows:

(A) Mental impairments may include a diagnosis, such as mental retardation.

(B) Physical impairments may include diagnoses, such as, but not limited to, any of the following:

(i) Epilepsy.

(ii) Cerebral palsy.

(iii) Autism spectrum.

(iv) Other neurological brain disorders, including traumatic brain injuries.

If there is no evidence of the diagnoses referenced in clause (A) or (B) or this subdivision, the criteria are not met and the individual cannot be considered eligible for developmental disabilities services and level of care.

(2) Evidence that the age of onset of the impairment is prior to twenty-two (22) years of age. If the age of onset is after twenty-two (22) years of age, the criteria are not met and the individual cannot be considered eligible for developmental disabilities services and level of care.

(3) Evidence that the impairment is expected to continue without a foreseeable end. If the requirement is not met, the individual cannot be considered eligible for developmental disabilities services and level of care.

(4) Evidence that the impairment or impairments identified in subdivision (1) reflect the individual's need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services that are individually planned and coordinated.

*(Office of the Secretary of Family and Social Services; [405 IAC 5-13-7.1](#))*

SECTION 4. [405 IAC 5-13-7.2](#) IS ADDED TO READ AS FOLLOWS:

**[405 IAC 5-13-7.2](#) Federally identified major life areas considered in eligibility criteria for ICF/MR level of care for persons with developmental disabilities**

Authority: [IC 12-8-6-5](#); [IC 12-15-1-10](#); [IC 12-15-1-15](#); [IC 12-15-21-2](#); [IC 12-15-21-3](#)

Affected: [IC 12-13-7-3](#); [IC 12-15](#)

**Sec. 7.2. (a)** In addition to satisfying the requirements of section 7.1 of this rule, at the time of an initial assessment, in order for an individual to meet the criteria for developmental disabilities eligibility and level of care, the individual must require assistance or be dependent upon others within three (3) areas of the following federally identified six (6) major life areas:

- (1) Capacity for independent living.
- (2) Learning.
- (3) Mobility.
- (4) Receptive and expressive language.
- (5) Self-care
- (6) Self-direction.

(b) For purposes of determining the major life areas in subsection (a), the following definitions apply:

(1) "Capacity for independent living" means the establishment and maintaining of a full and varied life in one's own home and community. For an adult, a substantial functional limitation exists when he or she requires assistance in these activities more than half the time. For a child, a substantial limitation exists when he or she, at an age appropriate level, is unable to assist in household chores, maintain appropriate roles and relationships within the family, use money, or use community resources, and has a substantial limitation in this area. This child requires more assistance to perform these activities than a typical child of the same age. Due to this impairment, the individual must be dependent on or require the assistance of another person to perform multiple routine activities of daily living including, but not limited to, the following:

- (A) Housekeeping and personal needs (not self-care), such as the following:
    - (i) Food preparation.
    - (ii) Laundering and maintenance of clothing.
    - (iii) Care and maintenance of living environment.
  - (B) Meeting one's own health care needs.
  - (C) Maintaining adequate interpersonal communication for routine activities of daily living.
  - (D) Mobility between or among the usual living environment and the learning, vocational, recreational, or other environments in the community, due to:
    - (i) a restricted range of travel; or
    - (ii) the inability to travel unaccompanied in unfamiliar areas.
  - (E) The use of basic community services to meet daily living requirements.
- (2) "Learning" includes the general cognitive competence and ability to:
- (A) acquire new behaviors, perceptions, and information; and
  - (B) apply previous experiences to new situations.

Due to this impairment, the individual must demonstrate the inability to generalize learning or skill acquisition from one (1) environment to another or require intensive or individualized instruction strategies, or both.

(3) "Mobility" includes motor development and the ability to use fine and gross motor skills. A substantial functional limitation exists when the individual requires the assistance of another person or a mechanical device in order to perform age appropriate fine motor skills or to move from place to place within the various environments (home, work, and store) that the individual encounters. Due to this impairment, the individual must be:

- (A) able to engage in only random or undirected movement; or
  - (B) dependent on or require the assistance of another person to provide prompts, safety supervision, or transfer assistance or require a mechanical device or other assistance for mobility.
- (4) "Receptive and expressive language (communication)" includes both verbal and nonverbal behaviors that enable the individual to:
- (A) understand others; and
  - (B) express ideas and information to others.

The concept of language includes the cognitive skill necessary for reading, writing, listening, and speaking. A substantial limitation exists when an individual is unable to effectively communicate with another person without the aid of another person or a communication device or is unable to articulate thoughts or to make ideas and wants known, or both. Examples of communication devices are communication boards and computerized speakers.

(5) "Self-care" includes, without limitation, daily activities that enable an individual to meet basic needs for eating, hygiene, and grooming. When an individual is dependent on or requires assistance in three (3) or more of the following five (5) activities listed in the self-care criteria, a substantial limitation is present:

- (A) Eating.
- (B) Toileting.
- (C) Bathing.
- (D) Dressing.
- (E) Grooming (tooth brushing, hair brushing, and nail care).

(6) "Self-direction" includes the ability to make independent decisions regarding and manage and control one's social and individual activities, to handle personal finances, or to protect one's own self interest. An adult may require direct or indirect assistance, such as supervision by another person or counseling, to successfully utilize these skills. A child may require assistance, at an age appropriate level, to make decisions and exercise judgment, behave in a socially acceptable manner, or act in his or her own interest. Due to these impairments, the individual must be dependent on or require the assistance of another person to make or carry out decisions involving legal, financial, health/safety, self-advocacy, or interpersonal issues as demonstrated by the need for frequent or ongoing assistance to complete the following:

- (A) Initiate common activities.
- (B) Identify and make informed choice of goals and objectives.
- (C) Identify and understand intermediate steps to achieve goals and objectives.
- (D) Envision potential outcomes of choices and associate outcomes with one's own attitudes, behaviors, and actions.
- (E) Maintain behaviors within generally accepted or tolerated norms and prevent harm or injury to one's self.
- (F) Plan and schedule activities.
- (G) Adapt schedules and routines to completions.
- (H) Shift focus appropriately from one (1) activity to another.
- (I) Work independently towards goals and objectives.
- (J) Manage finances.
- (K) Engage in self-advocacy.

(Office of the Secretary of Family and Social Services; [405 IAC 5-13-7.2](#))

SECTION 5. [405 IAC 5-13-10](#) IS REPEALED.

[Notice of Public Hearing](#)

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